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Alan Cavallerano

05/03/2006

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF DELAWARE

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AMPEX CORPORATION,

6

Plaintiff,

7

-against-

C.A. No.

04-1371-KAJ

8

EASTMAN KODAK COMPANY, ALTEK
CORPORATION and CHINON INDUSTRIES,
INC.,

9

10

Defendants.

**CERTIFIED ORIGINAL
LEGALINK BOSTON**

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May 3, 2006

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9:08 a.m.

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Videotaped Deposition of ALAN

15

CAVALLERANO, taken by Defendants,

16

pursuant to Notice, at the offices of

17

Wilmer Cutler Pickering Hale and Dorr

18

LLP, 399 Park Avenue, New York, New

19

York, before ERIC J. FINZ, a Shorthand

20

Reporter and Notary Public within and

21

for the State of New York.

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LegalLink Boston, A Merrill Company
(617) 542-0039

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09:22:57 1

ALAN CAVALLERANO

09:23:00 2

be -- that are displayable.

09:23:01 3

Q. So in your expert opinion,

09:23:05 4

any images that are displayable are

09:23:07 5

video; is that correct?

09:23:07 6

MR. BEAMER: Objection;

09:23:09 7

mischaracterizes testimony, vague,

09:23:12 8

overly broad.

09:23:14 9

A. Could you please repeat the

09:23:15 10

question?

09:23:18 11

Q. In your expert opinion, any

09:23:22 12

images that are displayable are video?

09:23:23 13

MR. BEAMER: Same objection.

09:23:27 14

Also incomplete hypothetical.

09:23:30 15

A. Video -- I will stick with

09:23:34 16

video images are images that are meant

09:23:35 17

to be displayed.

09:23:38 18

Q. So in your expert opinion,

09:23:41 19

video means any images that are

09:23:43 20

displayable; correct?

09:23:44 21

MR. BEAMER: Same objection.

09:23:47 22

And also asked and answered.

09:23:49 23

A. As I have already answered,

09:23:56 24

that's correct.

25

Q. What products fall into the

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09:58:51 1 ALAN CAVALLERANO

09:58:53 2 Q. Now, claim 7 doesn't use
09:58:57 3 the phrase prior to that you refer to
09:58:59 4 in your expert report; correct?

09:59:04 5 A. Could you point me to the
09:59:06 6 area in my expert report?

09:59:20 7 Q. Paragraph 93 of your expert
09:59:26 8 report, seventh line down, you indicate
09:59:27 9 "the reduced size image has to be
09:59:30 10 generated from the full size image
09:59:33 11 prior to storage of the full size image
09:59:36 12 on bulk memory."

09:59:38 13 Do you see that?

09:59:39 14 MR. BEAMER: And if you need
09:59:41 15 to read the context of that statement,
09:59:43 16 please feel free to do so. Also I
09:59:45 17 would request that we mark this as an
09:59:46 18 exhibit.

09:59:50 19 A. Yes, I do see -- I do see
09:59:50 20 that.

09:59:53 21 Q. Now, claim 7 doesn't
10:00:12 22 include the phrase prior to; correct?

10:00:15 23 A. I don't see those explicit
10:00:17 24 words from my sitting here right now in
. 25 claim 7.

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10:00:17 1 ALAN CAVALLERANO

10:00:19 2 Q. And claim 8 doesn't include
10:00:22 3 the words prior to; correct?

10:00:24 4 A. Well, I don't see those
10:00:27 5 specific words in the claim. Again, I
10:00:31 6 go back to my understanding of the
10:00:34 7 complete operation described in the
10:00:38 8 patent. And taking into account the
10:00:42 9 prosecution history and case history,
10:00:45 10 and that is how I draw my conclusions.

10:00:47 11 Q. In fact, none of the claims
10:00:50 12 include the phrase prior to; isn't that
10:00:51 13 correct?

10:00:54 14 A. If we are searching for a
10:01:00 15 particular phrase, I don't have the
10:01:02 16 document on a computer here where I
10:01:04 17 could do a search. But I don't believe
10:01:10 18 I see those explicit words. But not
10:01:14 19 seeing the specific words does not mean
10:01:18 20 that that particular order of operation
10:01:22 21 is not what is being instructed by the
10:01:22 22 patent.

10:01:24 23 Q. Okay. And that's in part
10:01:28 24 based on your review of the prosecution
25 history; correct?

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10:01:29 1 ALAN CAVALLERANO

10:01:30 2 A. Yes, that's correct.

10:01:33 3 Q. And earlier you referenced

10:01:35 4 that your opinion was in part based on

10:01:37 5 the examiner's statement of novelty?

10:01:38 6 A. Yes, that's correct.

10:01:40 7 Q. Would you be surprised to

10:01:43 8 learn, sir, that after the examiner's

10:01:46 9 statement of novelty, the applicant

10:01:49 10 specifically amended the claims to

10:01:51 11 remove the phrase prior to from the

10:01:52 12 claims?

10:01:53 13 A. Could you repeat the

10:01:56 14 question, please? Have the question

10:01:56 15 repeated.

10:01:58 16 Q. Would you be surprised to

10:02:00 17 learn, sir, that after the examiner's

10:02:03 18 statement of novelty, the applicant

10:02:05 19 specifically amended the claims to

10:02:09 20 remove the phrase prior to from the

10:02:10 21 claims?

10:02:14 22 A. I have reviewed this

10:02:21 23 document, the file history. I would

10:02:26 24 need to be pointed to that -- pointed

25. to that area in the document.

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02:28 1

ALAN CAVALLERANO

10:02:31 2

Q. Did you consider that when

10:02:35 3

reaching your opinion that generation

10:02:37 4

of reduced size images had to occur

10:02:40 5

prior to storage of the full on disk?

10:02:48 6

A. Did I take what under

10:02:48 7

consideration?

10:02:50 8

Q. Did you consider the fact

10:02:55 9

that the applicant specifically amended

10:02:57 10

the claims to remove the phrase prior

10:02:59 11

to when reaching your expert opinions

10:03:00 12

in this case?

10:03:09 13

A. I don't recall specifically

10:03:10 14

taking into account the words prior to.

10:03:11 15

Q. So you didn't consider the

10:03:14 16

fact when reaching the expert opinions

10:03:16 17

offered in your report, that the

10:03:19 18

applicant specifically amended the

10:03:22 19

claims in prosecution to remove the

10:03:24 20

phrase prior to from the claims;

10:03:25 21

correct?

10:03:26 22

MR. BEAMER: Objection. He

10:03:28 23

said he didn't recall. Why don't you

10:03:29 24

show him where it is and then he can

25

tell you whether he took it into

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10:03:31 1 ALAN CAVALLERANO

10:03:32 2 account.

10:03:34 3 A. I don't recall sitting here

10:03:36 4 right now. That doesn't mean that I

10:03:37 5 didn't take that into account at the

10:03:53 6 time.

10:03:56 7 Q. Sir, if you could turn your

10:03:59 8 attention to Exhibit 1, behind tab 3,

10:04:05 9 Bates number AX 061590.

10:04:08 10 A. I'm sorry.

10:04:09 11 MR. BEAMER: He doesn't have

10:04:09 12 tabs.

10:04:14 13 Q. It's Bates number AX

10:04:26 14 061590.

10:04:26 15 A. Okay.

10:04:28 16 Q. Do you have that page, sir?

10:04:29 17 A. Yes, I do.

10:04:33 18 Q. That is the page on which

10:04:36 19 the examiner listed the apparent

10:04:38 20 novelty of the invention that you

10:04:39 21 referred to; correct?

10:04:40 22 A. Yes, that's correct.

10:04:45 23 Q. And that was part of the

10:04:47 24 first office action; correct?

25 A. I believe that to be

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1 10:04:53 1 ALAN CAVALLERANO

10:04:54 2 correct, yes.

10:04:57 3 Q. And that was in December

10:04:59 4 '84?

10:05:13 5 A. I'm just looking to, I

10:05:16 6 apologize, I don't have the tabs here,

10:05:18 7 it's just a little hard to see to

10:05:40 8 verify these dates.

10:05:45 9 Q. If you turn to page AX

10:05:46 10 065587, that's the first page of this

10:05:50 11 office action, and it lists that it was

12 mailed on December 21, '84.

1 10:05:52 13 Do you see that?

10:05:53 14 A. Yes, I do.

10:05:55 15 Q. So the examiner stated

10:05:57 16 these three points of novelty that you

10:06:00 17 referred to in December of 1984;

10:06:00 18 correct?

10:06:00 19 A. Yes, that's correct.

10:06:02 20 Q. And you agree that the

10:06:03 21 claims that were then before the

10:06:05 22 examiner, as you state in your report,

10:06:08 23 were rejected; correct?

10:06:16 24 A. Yes, that's claims 1 and 3

25 of 14. The claims did -- these claim

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10:06:19 1 ALAN CAVALLERANO

10:06:23 2 numbers do not match with the claim

10:06:25 3 numbers of the issued patent.

10:06:25 4 Q. Of course.

10:06:26 5 A. Right.

10:06:27 6 Q. The claims that were then

10:06:29 7 before the examiner were rejected;

10:06:29 8 correct?

10:06:31 9 A. Yes, that's correct.

10:06:35 10 Q. Now, if you turn to AX

10:06:41 11 061703, please.

10:06:43 12 MR. BEAMER: I'm sorry,

10:06:45 13 what's the number again, please?

10:06:49 14 MR. SUMMERSGILL: AX 061703.

10:06:51 15 A. Um-hum.

10:06:55 16 Q. Do you have that page, sir?

10:06:56 17 A. Yes, I do.

10:07:00 18 Q. Now, as you indicate in

10:07:07 19 your report, this is a page from the

10:07:12 20 February 24, 1987 amendment submitted

10:07:14 21 by applicant; correct?

10:07:18 22 A. I'd need to verify the date.

10:07:23 23 But this is from the applicant.

10:07:25 24 Q. Paragraph 92 of your

25 report, sir.

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07:26 1 ALAN CAVALLERANO

10:07:28 2 A. Oh, referring to my report.

10:07:29 3 Yes, that's correct.

10:07:35 4 Q. Now, in this amendment, the
10:07:39 5 applicant submitted claims and asserted
10:07:41 6 that these claims were in accord with
10:07:44 7 the novelty identified by the examiner
10:07:46 8 in the first office action; correct?

10:07:52 9 A. Yes, that's correct.

10:07:53 10 Q. That's what you say in
10:07:56 11 paragraph 92 of your report; correct?

10:08:09 12 A. In accord with the novelty
10:08:10 13 identified by the examiner, that's
10:08:10 14 correct.

10:08:13 15 Q. And then at paragraph 93,
10:08:15 16 based on those comments by the
10:08:19 17 applicant, you conclude that generation
10:08:21 18 of reduced size images has to occur
19 prior to storage of the full on disk.

10:08:31 20 Do you see that?

10:08:32 21 A. Yes.

10:08:43 22 Q. Now, if you turn back to
10:08:49 23 page AX 061697, you'll see the actual
10:08:52 24 claims that were submitted with that
25 remark by the applicant.

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08:59 1

ALAN CAVALLERANO

10:09:00 2

Do you have that page, sir?

10:09:03 3

A. 61697, yes, I do.

10:09:06 4

Q. At the bottom of the page,

10:09:09 5

the claim states "means for generating

10:09:11 6

said corresponding reduced size image

10:09:14 7

from any said full size image in said

10:09:16 8

random access memory means to be

10:09:18 9

transferred to said memory means and

10:09:20 10

for storing the video pixel data

10:09:23 11

representing said reduced size image in

10:09:24 12

said random access memory means prior

10:09:27 13

to storage of the contents of said

10:09:30 14

random access memory means in said

15

memory means."

10:09:34 16

Do you see that?

10:09:35 17

A. Yes, I do.

10:09:38 18

Q. That claim specifically

10:09:41 19

requires generation of the reduced size

10:09:44 20

image prior to storage of the full size

10:09:47 21

image on disk; correct?

10:10:00 22

A. Yes, that's correct. That's

10:10:03 23

what that states.

10:10:06 24

Q. Now, sir, if you turn your

25

attention to AX 061706, which is the

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10:10:10 1 ALAN CAVALLERANO

10:10:14 2 next office action, you'll see that

10:10:16 3 those claims were rejected by the

10:10:20 4 examiner.

10:10:23 5 A. Yes.

10:10:26 6 Q. You don't mention that in

10:10:29 7 your report; correct?

10:10:34 8 A. No, that is not stated in

10:10:34 9 the report.

10:10:37 10 Q. So all of the claims that

10:10:41 11 Ampex contended reflected novelty

10:10:45 12 identified by the examiner were

10:48 13 rejected; correct?

10:11:14 14 A. From the reading of this

10:11:18 15 office action, those specific claims

10:11:21 16 were rejected.

10:11:23 17 Q. Okay. Then if you turn to

10:11:28 18 Bates number AX 061708, you'll see the

10:11:30 19 next amendment submitted by the

10:11:34 20 applicant in May 1988.

10:11:34 21 A. Yes.

10:11:36 22 Q. Do you have that, sir?

10:11:37 23 A. Yes, I do.

10:11:40 24 Q. And if you turn to page AX

25 061714, you'll see the same claim that

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11:46 1 ALAN CAVALLERANO

10:11:48 2 we've been referring to. Do you have

10:11:49 3 that, sir?

10:11:51 4 A. I am on the page, yes.

10:11:56 5 Q. And you understand that in

10:11:59 6 prosecution history, the brackets

10:12:01 7 around language means language that's

10:12:03 8 been removed; correct?

10:12:04 9 A. That's my understanding,

10:12:04 10 yes.

10:12:06 11 Q. And the underlining under

10:12:08 12 language is language that's been added;

10:12:09 13 correct?

10:12:14 14 A. That's my understanding,

10:12:15 15 yes. I'm not an attorney or a patent

10:12:18 16 agent. But that's my understanding,

10:12:18 17 yes.

10:12:20 18 Q. And do you see at the

10:12:24 19 bottom of the page, the applicant

10:12:28 20 specifically removed the words prior to

10:12:31 21 storage of. Correct?

10:12:37 22 A. I'm sorry, I'm not -- this

10:12:38 23 is on 714?

10:12:42 24 Q. Yes, sir. Second line from

25 the bottom, the applicant specifically

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1 12:45 1

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2 removed the words prior to storage of.

10:12:48 3

Do you see that?

10:12:58 4

A. Yes, I see that now.

10:13:02 5

Q. Did you consider that in

10:13:04 6

reaching the opinions expressed in your

10:13:05 7

report?

10:13:13 8

A. I may have. I may have.

10:13:15 9

Q. But you don't recall; is

10:13:15 10

that right?

10:13:21 11

A. I don't recall. Because I

10:13:23 12

have -- it's an extensive amount of

1 13:26 13

materials, and I have reviewed them on

10:13:29 14

several different occasions. And

10:13:30 15

sitting here right now I can't say

10:13:33 16

whether I recall taking that into

10:13:33 17

account.

10:13:36 18

Q. Now, the prior to language

10:13:39 19

that was removed in this May 1988

10:13:40 20

amendment by applicant was never

10:13:42 21

inserted back into the claims; correct?

10:13:48 22

A. Yes, we discussed that

10:13:51 23

earlier, that I don't see those exact

10:13:54 24

words in the claim.

25

Q. And so do you agree that

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13:56 1 ALAN CAVALLERANO

10:14:00 2 the applicant amended the claims to

10:14:03 3 specifically remove the requirement

10:14:07 4 that reduced size images be generated

10:14:11 5 prior to storage of full on the disk?

10:14:12 6 MR. BEAMER: Objection; lack

10:14:17 7 of foundation, overly broad.

10:14:20 8 A. No, what I can conclude here

10:14:25 9 is that the language of the claims, as

10:14:28 10 the patent was issued, do not contain

10:14:29 11 prior to. And that there were

10:14:34 12 instances throughout the file case

10:14:37 13 history where there were instances of

10:14:39 14 the word prior to. And that those

10:14:43 15 words are no longer present in the

10:14:46 16 issued claims. That's what I can

10:14:46 17 attest to.

10:14:48 18 Q. All of the portions of the

10:14:51 19 prosecution history that you cite in

10:14:53 20 support of your opinion that the claims

10:14:58 21 require prior to, are portions of the

10:15:00 22 prosecution history that come before

10:15:02 23 the examiner amended the claims to

10:15:19 24 remove the phrase prior to; correct?

25 MR. SUMMERSGILL: Strike

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15:19 1 ALAN CAVALLERANO

10:15:20 2 that, I misspoke.

10:15:22 3 Q. All of the portions of the
10:15:24 4 prosecution history that you cite in
10:15:27 5 support of your opinion are portions of
10:15:28 6 the prosecution history that come
10:15:32 7 before the applicant specifically
10:15:35 8 amended his claims to remove the phrase
10:15:37 9 prior to; correct?

10:15:38 10 MR. BEAMER: Objection; lack
10:15:45 11 of foundation.

10:15:48 12 A. Again, I can't say for a
10:15:51 13 fact if that's the case or not, sitting
10:15:54 14 here right now.

10:15:57 15 Q. Well, the last portion of
10:16:00 16 your report addressing this issue in
10:16:06 17 paragraph 92 cites to the February 1987
10:16:06 18 amendment; correct?

10:16:07 19 A. Yes, that's correct.

10:16:10 20 Q. And you conclude based on
10:16:15 21 the language in that amendment that
10:16:18 22 generation of reduced size images is
10:16:19 23 required prior to the storage of full
10:16:20 24 on disk; correct?

25 A. Yes, that's correct.

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10:16:21 1 ALAN CAVALLERANO

10:16:26 2 Q. And after that February
10:16:28 3 1987 amendment, the applicant
10:16:30 4 specifically amended the claims to
10:16:32 5 remove the phrase prior to from the
10:16:38 6 claims; correct?

10:16:40 7 A. The words prior to were
10:16:50 8 removed from the claims. The words
10:16:51 9 prior to were removed from the claims.
10:16:58 10 But I'm not convinced that in terms of
10:17:01 11 the operation of the patent, of the
10:17:03 12 teachings of the patent and the
10:17:05 13 operation of equipment according to the
10:17:08 14 patent, that that would not be a
10:17:11 15 requirement. Because it just wouldn't
10:17:13 16 make sense in terms of the operation
10:17:14 17 described.

10:17:16 18 Q. So it's your expert opinion
10:17:19 19 today that even though the applicant
10:17:21 20 specifically amended the claims to
10:17:25 21 remove the phrase prior to, the claims
10:17:27 22 still require the generation of the
10:17:30 23 reduced size image prior to the storage
10:17:33 24 of the full on disk?

25 A. That is my -- that's my

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10:17:36 1 ALAN CAVALLERANO

10:17:38 2 expert opinion.

10:17:41 3 Q. Okay. And even though the
10:17:43 4 specific language on which you rely
10:17:46 5 from the prosecution history was later
10:17:48 6 removed from the claims, it's still
10:17:51 7 your expert opinion that the claims
10:17:53 8 retain the same meaning; is that
10:17:53 9 correct?

10:17:54 10 MR. BEAMER: Objection; lack
10:17:56 11 of foundation, argumentative.

10:17:59 12 A. I'm sorry, could you repeat
10:17:59 13 the question?

10:18:01 14 Q. Even though the specific
10:18:03 15 language on which you rely from the
10:18:05 16 prosecution history was later removed
10:18:08 17 from the claims, it's still your expert
10:18:11 18 opinion that the claims retain the same
10:18:16 19 meaning; is that correct?

10:18:17 20 MR. BEAMER: Same objection.

10:18:26 21 A. I'm of the opinion from
10:18:31 22 reading the patent that this is a
10:18:34 23 requirement.

10:18:35 24 Q. Even though the prosecution
25 history specifically contradicts that

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ALAN CAVALLERANO

opinion?

MR. BEAMER: Objection;

mischaracterizes the record.

A. What I -- I looked at the prosecution history where the concept of the patent had to have been analyzed by the patent examiner. And in examining the patent, the patent examiner in the statement of novelty, and I'll just go to, again, go to that point in the expert report, the second point of paragraph 80, "the size reduction and reduction of frame of video data is performed by the interaction between the size reducer and frame sort prior to storage of in the image storage."

And given that the nature of this patent has been changed throughout its prosecution history, I can't attest to individual words that may or may not have been present or deleted. But this reflects an analysis of the operation of the patent, which I believe, as an

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11:04:05 1

ALAN CAVALLERANO

11:04:06 2

size images; correct?

11:04:08 3

A. Yes. And that's what I'm

11:04:10 4

describing as prior art. That this is

11:04:11 5

indeed capable, yes, that's correct.

11:04:14 6

Q. So the prior art disclosed

11:04:18 7

automatic generation of reduced size

11:04:19 8

images; correct?

11:04:19 9

MR. BEAMER: Asked and

11:04:20 10

answered.

11:04:21 11

A. As I have stated, this is

11:04:24 12

prior art. Being able to generate it

11:04:27 13

automatically was known. What's not

11:04:31 14

prior art is how the steps involved in

11:04:34 15

creating those reduced size images.

11:04:36 16

Q. But as of the time

11:04:39 17

Mr. Beaulier filed his patent

11:04:42 18

application, automatically generating

11:04:45 19

reduced size images was not a novel

11:04:47 20

concept; correct?

11:04:49 21

MR. BEAMER: Asked and

11:04:50 22

answered.

11:04:52 23

A. That's correct. And since

11:04:56 24

the '121 patent is an improvement over

25

the state of the art, I would then take

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05:02 1 ALAN CAVALLERANO

11:05:05 2 into account that since the prior art
11:05:08 3 already was able to perform this
11:05:12 4 automatic generation, that that's with
11:05:14 5 my -- that's what I assumed from the
11:05:17 6 get-go for my '121.

11:05:19 7 Q. So do you assume that all
11:05:23 8 elements of the prior art are part of
11:05:26 9 the invention of the '121 patent?

11:05:27 10 MR. BEAMER: Objection;
11:05:30 11 vague, overly broad, argumentative.

11:05:32 12 A. Okay, when you say all of
11:05:34 13 the elements, I would say there are a
11:05:36 14 lot of key elements that need to be
11:05:37 15 assumed or transferred over, since this
11:05:39 16 is an improvement. You say all of the
11:05:42 17 elements, I don't know what all of the
11:05:45 18 elements that -- they may not
11:05:46 19 pertain -- some of the elements of the
11:05:48 20 prior art systems may or may not
11:05:52 21 pertain to the aspect of the '121
11:05:58 22 invention. But most certainly the --
11:06:01 23 these major elements, being able to do
11:06:04 24 a browse, being able to access from the
25 browse a full size image, this is all

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06:06 1 ALAN CAVALLERANO

11:06:06 2 prior art.

11:06:08 3 Q. So you're assuming that
11:06:11 4 automatic generation of reduced size
11:06:14 5 images is part of the '121 invention
11:06:16 6 because it was part of the prior art?

11:06:19 7 A. No. I'm assuming -- not
11:06:22 8 exclusively. Let me correct myself.
11:06:24 9 If I could just start over.

11:06:25 10 The answer is yes, that's
11:06:27 11 part of my reason. It's not
11:06:28 12 exclusively my reason.

11:06:31 13 Q. Okay. How do you decide
11:06:33 14 which elements of the prior art are
11:06:35 15 part of the invention and which
11:06:37 16 elements of the prior art are not part
11:06:38 17 of the invention?

11:06:40 18 A. Well, first of all, it would
11:06:43 19 come from a general reading of the
11:06:48 20 patent, looking at prior art that's
11:06:52 21 cited and how the patent is meant to be
11:06:55 22 or the invention, I should say, is
11:06:57 23 meant to be utilized. And in those
11:07:02 24 cases I look at what would be relevant,
25 and what is cited. What is cited by

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51:50 1 ALAN CAVALLERANO

11:51:52 2 Q. What is the closest prior
11:51:57 3 art product to the '121 patent?

11:51:58 4 MR. BEAMER: Objection;
11:52:06 5 vague, incomplete hypothetical.

11:52:07 6 A. Well, of the products that
11:52:22 7 I'm aware of, it would be still stores
11:52:27 8 in this time frame, in the time frame
11:52:29 9 of the '121 patent, that also had the
11:52:38 10 capability to browse, to create edit
11:52:42 11 screens. So for example the 6000, the
11:52:45 12 DLS 6000 would come to mind.

11:52:47 13 Q. Is it your understanding
11:52:50 14 that the Quantel DLS 6000 is the
11:52:52 15 closest prior art product to the '121
11:52:52 16 patent?

11:52:53 17 MR. BEAMER: Objection;
11:52:55 18 mischaracterizes the prior testimony,
11:53:01 19 vague and indefinite.

11:53:02 20 A. I would say it's one of the
11:53:07 21 products that would be -- that one
11:53:12 22 could consider as prior art, because it
11:53:18 23 performed the operation of browse in a
11:53:20 24 different way, in a way that didn't
25 have the advantages of the '121 patent.

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11:53:25 1

ALAN CAVALLERANO

11:53:28 2

There were other products available,

11:53:37 3

such as from ADDA, A-D-D-A, and even,

11:53:41 4

you know, other types of still store

11:53:47 5

products. So that would be one of the

11:53:49 6

products that I would consider.

11:53:51 7

Q. Is it your opinion that the

11:53:55 8

Quantel DLS 6000 is more material prior

11:53:58 9

art than the Quantel Paint Box?

11:54:10 10

A. I would say so. Because it

11:54:20 11

was specifically -- it specifically had

11:54:23 12

the browse capability.

11:54:27 13

Q. You're aware the Paint Box

11:54:30 14

had a browse capability; are you not?

11:54:32 15

A. Yes, I am aware.

11:54:34 16

Q. Why is the Paint Box browse

11:54:38 17

not relevant prior art to the '121

11:54:39 18

patent?

11:54:41 19

MR. BEAMER: Objection;

11:54:43 20

mischaracterizes his testimony.

11:54:44 21

A. I didn't say that it wasn't

11:54:47 22

relevant prior art. We were talking

11:54:51 23

about which is the most relevant prior

11:54:53 24

art.

25

Q. Why is the DLS produce more

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J 54:56 1 ALAN CAVALLERANO

11:55:00 2 relevant than the Quantel Paint Box

11:55:02 3 browse?

11:55:07 4 A. What I'm saying is the DLS

11:55:14 5 6000 is specifically a still store -- a

11:55:25 6 still store device. And as such I

11:55:31 7 would see that as being a relevant --

11:55:36 8 relevant prior art: Paint Box and

11:55:40 9 other graphics oriented systems may

11:55:43 10 also have had such a capability, a

11:55:49 11 browse capability, and may also -- and

11:55:53 12 are also relevant. I don't think I

11:55:56 13 could say one would necessarily be more

11:56:02 14 or less relevant than the other. I was

11:56:04 15 simply stating that the DLS 6000 indeed

11:56:07 16 was an example of a still store device

11:56:08 17 that I considered to be relevant.

11:56:10 18 Q. In your expert opinion, is

11:56:14 19 the DLS browse more relevant to the

11:56:16 20 '121 patent than the Quantel Paint Box

11:56:24 21 browse?

11:56:25 22 MR. BEAMER: Asked and

11:56:25 23 answered.

11:56:27 24 A. It's difficult for me to cut

25 hairs and say whether one is more or

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56:28 1 ALAN CAVALLERANO

11:56:36 2 less relevant, because I don't know in
11:56:38 3 what particular area of relevancy. I
11:56:43 4 think both products are products that
11:56:48 5 are related to the patent, and I'm
11:56:54 6 citing that the 6000 is exactly a still
11:56:57 7 store device. And that's why I was
11:56:59 8 specifically citing that product.

11:57:02 9 Q. Do you think the Quantel
11:57:04 10 Paint Box browse should have been
11:57:06 11 disclosed to the Patent Office during
11:57:07 12 prosecution of the '121 patent?

11:57:08 13 MR. BEAMER: Objection;
11:57:11 14 vague and indefinite, overly broad.

11:57:14 15 A. Well, I think that the Paint
11:57:18 16 Box browse indeed, we've already
11:57:23 17 established it's prior art to the '121
11:57:27 18 patent. And in fact it's essentially,
11:57:30 19 it has the capabilities of figure 18
11:57:34 20 and 19 in the Taylor patent. And
11:57:37 21 therefore a product that was already
11:57:40 22 considered during the prosecution of
11:57:43 23 the '121 patent, because it was a
11:57:51 24 product that was -- a product that was
25 already, its operations were already

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11:57:53

1

ALAN CAVALLERANO

11:57:56

2

covered and already disclosed by the

11:57:57

3

prior art that was cited.

11:58:01

4

Q. Okay. So it's your expert

11:58:05

5

opinion that Quantel Paint Box browse

11:58:07

6

was disclosed to the Patent Office

11:58:10

7

during prosecution of the '121 patent?

11:58:14

8

A. What I'm saying is that the

11:58:19

9

operations achieved, the functionality

11:58:26

10

achieved, or achievable with the Paint

11:58:28

11

Box device, was nothing novel. And it

11:58:30

12

was operations that were already

11:58:31

13

covered by prior art.

11:58:34

14

Q. Is it your expert opinion

11:58:42

15

that the Quantel DLS 6000 browse is the

11:58:49

16

same as the Quantel Paint Box browse?

11:58:56

17

A. A Quantel 6000 browse, and

11:59:01

18

again, I would have to qualify what the

11:59:07

19

browse -- what the browse is. With the

11:59:09

20

Quantel 6000, it had an automatic

11:59:12

21

browse capability, but that automatic

11:59:15

22

browse required that the reduced size

11:59:21

23

images be taken off of the disk. On

11:59:24

24

the -- as the browse screen was being

..

25

created.

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11:59:26 1 ALAN CAVALLERANO

11:59:29 2 The Paint Box browse had

11:59:38 3 that capability as well. However, the

11:59:42 4 Paint Box, there was more flexibility

11:59:47 5 in some sense to be able to do cutting

11:59:51 6 and pasting and sticking of images

11:59:54 7 above and beyond what the 6000 was

11:59:55 8 capable.

11:59:57 9 Q. Okay. Do you agree that

12:00:01 10 the Paint Box system could browse

12:00:03 11 cutouts?

12:00:05 12 A. Yes, I'm aware of that.

12:00:09 13 Q. And the DLS 6000 system

12:00:12 14 could not browse cutouts; correct?

12:00:16 15 A. That's correct.

12:00:17 16 Q. And so the Paint Box

12:00:21 17 ability to browse cutouts was never

12:00:23 18 disclosed to the Patent Office during

12:00:25 19 prosecution of the '121 patent;

12:00:27 20 correct?

12:00:37 21 A. Well, that's not true

12:00:40 22 because the cutouts were generated

12:00:43 23 using -- essentially looking at figure

12:00:45 24 19, or looking at the second figure

25 from tab C in my expert report. It was

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00:49 1 ALAN CAVALLERANO

12:00:53 2 generated by going from the frame store

12:00:57 3 through the size reducer, to the bulk

12:01:01 4 store. Just for those cutouts. So

12:01:06 5 this was already -- it was already

12:01:08 6 known that you could take a piece of an

12:01:12 7 image or take an image and size reduce

12:01:16 8 it and put it into bulk store. And

12:01:20 9 browsing, that was already a known --

12:01:22 10 that was a known functionality.

12:01:24 11 Q. Is it your expert opinion

12:01:28 12 that the '776 patent discloses the

12:01:31 13 browsing of reduced size images?

12:01:32 14 MR. BEAMER: Objection; lack

12:01:34 15 of foundation.

12:01:47 16 A. It discloses the -- it

12:01:55 17 discloses the browsing of images.

12:02:01 18 Q. Does the '776 patent

12:02:03 19 disclose the browsing of reduced size

12:02:08 20 images, yes or no?

12:02:16 21 A. Let me just have a moment.

12:02:20 22 Certainly if we look at, for

12:02:35 23 example, I just want to go to column 3,

12:02:46 24 column 4, the entire operations that

25 are described here, in particular

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12:02:47 1

ALAN CAVALLERANO

12:02:51 2

column 4, lines 45 to 49.

12:02:53 3

MR. BEAMER: You are on the

12:02:54 4

'776 patent?

12:03:01 5

THE WITNESS: Yes.

12:03:04 6

Q. Is it your expert opinion

12:03:09 7

that the '776 patent, column 4,

12:03:12 8

discloses the browse of reduced size

12:03:13 9

images?

12:03:14 10

A. Yes. Actually I was going

12:03:17 11

to point us to several locations. For

12:03:20 12

example, column 3, lines roughly --

12:03:24 13

actually 54 -- excuse me, 55 even says

12:03:31 14

"this browse facility," it's talking

12:03:34 15

about polyphoto formats. And in column

12:03:47 16

4, lines 45 to 49. I'm sorry, I would

12:03:49 17

like to just correct myself on the

12:03:52 18

lines 45 to 49. I'll stick with the

12:03:55 19

column 3 citing.

12:03:57 20

Q. And is it your expert

12:03:59 21

opinion that what you've referenced in

12:04:02 22

column 3 discloses the browse of

12:04:04 23

reduced size images?

12:04:07 24

A. This in conjunction with my

25.

reading of the patent. Because if we

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04:13 1 ALAN CAVALLERANO

12:04:16 2 look earlier on in column 3, line 39,

12:04:18 3 it says "the contents of the disk store

12:04:20 4 may hold several hundred separate

12:04:22 5 pictures and the problem of examining

12:04:25 6 the contents of this store in order to

12:04:30 7 find a picture you need exists." Then

12:04:32 8 down further to my citing about the

12:04:34 9 browse facility with polyphoto format,

12:04:41 10 a polyphoto format would, it's a total

12:04:43 11 of 64 miniature pictures.

12:04:47 12 So it is a browse of images

12:04:51 13 that have been reduced in size and put

12:04:56 14 into like a montage. So I have to be

12:05:02 15 explicit that it is browsing smaller

12:05:05 16 versions of the full size images that

12:05:09 17 are within the machine.

12:05:10 18 Q. Okay. Is it your expert

12:05:16 19 opinion that the '776 patent discloses

12:05:19 20 the browse of reduced size images that

12:05:21 21 have been stored on disk?

12:05:22 22 A. That's my understanding from

12:05:25 23 reading the patent, yes.

12:05:27 24 Q. If the '776 patent

25 . . discloses the browse of reduced size

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ALAN CAVALLERANO

images that have been stored on disk,
what is the invention of the '121
patent?

A. The invention is the method
of generating these reduced size images
that are put on the disk and read from
the disk in reduced form, rather than
generating them, like in the '776,
where all that's being done is the
images are stored as a polyphoto. And
then retrieved that way. So one needs
to create this polyphoto for the
browse.

The browse is not described
to be generated by storing the reduced
size images first. They are either
read out from the disk and reduced in
size sort of on the fly, or if
something, we do know in figure 19, the
size reducer is interposed from the
frame store to the disk store. So even
that concept is there. But in terms of
a total method, that is not described
in the '776.

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07:06 1

ALAN CAVALLERANO

12:07:13 2

Q. Did Dan Beaulier invent the

12:07:14 3

electronic still store?

12:07:15 4

A. I can't say that he did or

12:07:17 5

that he didn't. I don't know for a

12:07:18 6

fact whether he did or whether he

12:07:18 7

didn't.

12:07:23 8

Q. Did Dan Beaulier invent the

12:07:28 9

size reducer?

12:07:30 10

A. Again, I don't know -- I

12:07:32 11

don't know what other patents this

12:07:34 12

gentleman may or may not have. Most

12:07:40 13

certainly these were known to one

12:07:43 14

skilled in the art at the time of the

12:07:47 15

'121 patent. As to whether he invented

12:07:50 16

them prior, I do not know. I would

12:07:52 17

venture to say he probably didn't, but

12:07:53 18

I don't know.

12:07:55 19

Q. Was the '121 patent the

12:07:59 20

first disclosure of an electronic still

12:08:00 21

store?

12:08:03 22

A. I can't imagine that that

12:08:05 23

would be the case, because there was

12:08:10 24

prior art, prior art systems.

25

Q. So the '121 patent was not

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12:08:13 1

ALAN CAVALLERANO

12:08:15 2

the first disclosure of the electronic

12:08:17 3

still store; correct?

12:08:17 4

A. That's correct.

12:08:19 5

Q. Was the '121 patent the

12:08:21 6

first disclosure of a size reducer?

12:08:22 7

A. Most certainly not.

12:08:26 8

Q. Was the '121 patent the

12:08:29 9

first patent to disclose reducing the

12:08:31 10

size of video images?

12:08:33 11

A. Most certainly not.

12:08:35 12

Q. Was the '121 patent the

12:08:40 13

first to disclose the generation of

12:08:42 14

reduced size images?

12:08:43 15

A. No.

12:08:48 16

Q. The '121 patent was not the

12:08:53 17

first to disclose automatically reduced

12:08:55 18

size images; correct?

12:08:55 19

A. That's correct.

12:08:58 20

Q. Dan Beaulier didn't invent

12:08:59 21

the disk; did he?

12:09:00 22

A. Again, I would venture to

12:09:02 23

guess he did not. But I do not know

12:09:05 24

personally what his -- what portfolio

25

this gentleman has.

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1 09:06 1

ALAN CAVALLERANO

12:09:09 2

Q. The '121 patent wasn't the

12:09:10 3

first to disclose the disk; correct?

12:09:11 4

A. That's correct.

12:09:13 5

Q. The '121 patent wasn't the

12:09:15 6

first to disclose random access memory;

12:09:15 7

correct?

12:09:16 8

A. Most certainly not.

12:09:19 9

Q. The '121 patent wasn't the

12:09:20 10

first to disclose a frame store;

12:09:21 11

correct?

12:09:21 12

A. That's correct.

12:09:23 13

Q. The '121 patent wasn't the

12:09:24 14

first to disclose the storage of

12:09:27 15

reduced size images on disk; correct?

12:09:28 16

MR. BEAMER: Objection;

12:09:29 17

lacks foundation.

12:09:31 18

A. It wasn't the first to

12:09:36 19

disclose storing reduced size images on

12:09:40 20

disk. But it was the first to disclose

12:09:45 21

a novel way of putting reduced size

12:09:47 22

images on disk.

12:09:49 23

Q. But we can agree that the

12:09:51 24

'121 patent was not the first to

25

disclose storing reduced size images to

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09:54 1

ALAN CAVALLERANO

12:09:54 2

disk; correct?

12:09:56 3

A. Yes, that's correct. And

12:10:00 4

figure 19 of the Taylor patent even

12:10:01 5

shows us that. So that's correct.

12:10:04 6

Q. And the '121 patent was not

12:10:06 7

the first to disclose storing reduced

12:10:09 8

size images on disk using only the

12:10:11 9

memory corresponding to the reduced

12:10:15 10

size image; correct?

12:10:16 11

MR. BEAMER: Objection;

12:10:30 12

vague.

12:10:31 13

A. That would have to be --

12:10:33 14

yes, that's the case. Because again, I

12:10:37 15

would look at the '776 patent and see

12:10:40 16

the size reducer interposed between

12:10:42 17

frame store or whatever my image

12:10:45 18

capture, and going to disk.

12:10:47 19

Q. So you agree the prior art

12:10:49 20

discloses the ability to store a

12:10:51 21

reduced size image on disk using only

12:10:56 22

the memory corresponding to the size of

12:10:58 23

the size of the reduced size image?

12:10:59 24

MR. BEAMER: Again, I object

25

as vague, as to the word memory.

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11:08

1

ALAN CAVALLERANO

12:11:12

2

A. What I will say is that a

12:11:16

3

reduced size image could be generated

12:11:18

4

and only the reduced -- only those

12:11:20

5

pixels representing the reduced size

12:11:26

6

image could then be supported -- could

12:11:31

7

then be stored, yes. But that's not a

12:11:33

8

novel concept to prior art.

12:11:34

9

Q. Right. What you said in

12:11:37

10

your expert report was that the prior

12:11:39

11

art disclosed the ability to store a

12:11:42

12

reduced size image on disk consisting

12:11:45

13

of only the data making up the reduced

12:11:48

14

size image itself; correct?

12:11:49

15

A. Yes, that's correct.

12:11:57

16

Q. Dan Beaulier was not the

12:12:00

17

first to store reduced size images in

12:12:01

18

random access memory; correct?

12:12:03

19

A. Again, generally, I would

12:12:05

20

have to assume that that's the case.

12:12:06

21

But I don't know what patents this

12:12:10

22

gentleman has or doesn't have. But I

12:12:10

23

would.

12:12:12

24

Q. The '121 patent is not the

25

first disclosure of the storage of